

Senate Bill No. 212

CHAPTER 320

An act to amend Section 742.24 of the Insurance Code, relating to investments.

[Approved by Governor September 4, 2003. Filed
with Secretary of State September 5, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 212, Machado. Insurance: investments: multiple employer welfare arrangements.

Existing law allows for the creation of multiple employer welfare arrangements (MEWAs), which may provide certain benefits, including health benefits, to the employees of 2 or more employers. Existing law allows MEWAs to invest their assets in securities or loans on securities that meet certain requirements, and to make specified excess funds investments.

This bill would provide that a MEWA may invest a specified portion of its assets in an open-ended diversified management company, as defined, that meets certain requirements. The bill would allow the Insurance Commissioner to require a MEWA to dispose of an investment in certain circumstances.

The people of the State of California do enact as follows:

SECTION 1. Section 742.24 of the Insurance Code is amended to read:

742.24. To be eligible for a certificate of compliance, a self-funded or partially self-funded multiple employer welfare arrangement shall meet all of the following requirements:

(a) Be nonprofit.

(b) Be established and maintained by a trade association, industry association, professional association, or by any other business group or association of any kind that has a constitution or bylaws specifically stating its purpose, and have been organized and maintained in good faith with at least 200 paid members and operated actively for a continuous period of five years, for purposes other than that of obtaining or providing health care coverage benefits to its members. An association is a California mutual benefit corporation comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for

membership any individual or employer meeting its membership criteria, which do not condition membership directly or indirectly on the health or claims history of any person, and which uses membership dues solely for and in consideration of the membership and membership benefits.

(c) Be organized and maintained in good faith with at least 2,000 employees and 50 paid employer members and operated actively for a continuous period of five years.

(d) Have been operating in compliance with ERISA on a self-funded or partially self-funded basis for a continuous period of five years pursuant to a trust agreement by a board of trustees that shall have complete fiscal control over the multiple employer welfare arrangement, and that shall be responsible for all operations of the multiple employer welfare arrangement. The trustees shall be selected by vote of the participating employers and shall be owners, partners, officers, directors, or employees of one or more employers participating in the multiple employer welfare arrangement. A trustee may not be an owner, officer, or employee of the insurer, administrator, or service company providing insurance or insurance-related services to the association. The trustees shall have authority to approve applications of association members for participation in the multiple employer welfare arrangement and to contract with an authorized administrator or service company to administer the day-to-day affairs of the multiple employer welfare arrangement.

(e) Benefits shall be offered only to association members.

(f) Benefits may be offered only through life agents, as defined in Section 1622, licensed in the state whose names, addresses, and telephone numbers have been filed with the commissioner as licensed life agents for the multiple employer welfare arrangement.

(g) Be operated in accordance with sound actuarial principles and conform to the requirements of Section 742.31.

(h) File an application with the department for a certificate of compliance no later than November 30, 1995.

(i) The multiple employer welfare arrangement shall at all times maintain aggregate stop loss insurance providing the arrangement with coverage with an attachment point which is not greater than 125 percent of annual expected claims. The commissioner may, by regulation, define “expected claims” for purposes of this subdivision and provide for adjustments in the amount of the percentage in specified circumstances in which the arrangement specifically provides for and maintains reserves in accordance with sound actuarial principles as provided in Section 742.31.



(j) The multiple employer welfare arrangement shall establish and maintain specific stop loss insurance providing the arrangement with coverage with an attachment point which is not greater than 5 percent of annual expected claims. The commissioner may, by regulation, define “expected claims” for purposes of this subdivision and provide for adjustments in the amount of that percentage as may be necessary to carry out the purposes of this subdivision determined by sound actuarial principles as provided in Section 742.31.

(k) The multiple employer welfare arrangement shall establish and maintain appropriate loss and loss adjustment reserves determined by sound actuarial principles as provided in Section 742.31.

(l) The association has within its own organization adequate facilities and competent personnel to serve the multiple employer welfare arrangement, or has contracted with a licensed third-party administrator to provide those services.

(m) The association has established a procedure for handling claims for benefits in the event of the dissolution of the multiple employer welfare arrangement.

(n) On and after January 1, 2003, in addition to the requirements of this article, maintain a surplus of not less than one million dollars (\$1,000,000), and that this amount be increased as follows: one million seven hundred fifty thousand dollars (\$1,750,000) by January 1, 2004; two million five hundred thousand dollars (\$2,500,000) by January 1, 2005; three million two hundred fifty thousand dollars (\$3,250,000) by January 1, 2006; and four million dollars (\$4,000,000) by January 1, 2007.

(o) Submit all proposed rate levels to the department for informational purposes no later than 45 days prior to their implementation. The proposed rates shall contain an aggregate benefit structure which has a loss ratio experience of not less than 80 percent. The loss ratio experience shall be calculated as claims paid during the contract period plus a reasonable estimate of claims liability for the contract period at the end of the current year divided by contributions paid or collected for the contract period minus unearned contributions at the end of the current year.

(p) (1) Comply with the investment requirements of Article 3 (commencing with Section 1170) of Chapter 2 of Part 2 of Division 1 and Section 1192.5, except for investments made pursuant to paragraph (2).

(2) (A) A multiple employer welfare arrangement may invest funds as provided in subparagraph (B) in an amount not to exceed 75 percent of any excess of invested assets over the sum of the following:

(i) The reserves and related actuarial items held in support of policies and contracts.



(ii) The surplus required by subdivision (n).

(B) The investments authorized by subparagraph (A) may be made only in an open-ended diversified management company, as defined in the federal Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), that is registered with and reports to the Securities and Exchange Commission and is domiciled in the United States, and all of the assets of which are held in the United States by a bank, trust company, or other custodian chartered by the United States, or its territories or states.

(3) The commissioner may, in his or her discretion and after a hearing, require by written order the disposal of any investment made in violation of this section. The commissioner may also, after a hearing, require the disposal of any investment made pursuant to paragraph (2) if the multiple employer welfare arrangement has failed to maintain cash or liquid assets sufficient to meet its claims and any other contractual obligations.

